



Federal Communications Commission  
Washington, D.C. 20554

October 27, 2021

DA 21-1345

## **Small Entity Compliance Guide**

### **Auction of Low Power Television and TV Translator Station Construction Permits (Auction 111 Procedures)**

DA 21-1176  
AU Docket No. 21-284  
Released: September 21, 2021

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)  
TTY: 1-888-TELL-FCC (1-888-835-5322)  
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)  
Fax: 1-866-418-0232

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## I. OBJECTIVES OF THE PROCEEDING

This Small Entity Compliance Guide (SECG) is designed to help individuals and small businesses understand the requirements and other procedures for the Commission's closed auction to resolve pending groups of mutually exclusive applications for up to 17 construction permits for new or modified low power television (LPTV) stations and TV translator stations (collectively referred to as "LPTV/translator stations") as established in the *Auction 111 Procedures Public Notice*.<sup>1</sup> This guide **is not a substitute** for reading and reviewing orders, rules, and public notices applicable for the auction, nor is it a substitute for legal advice on how the competitive bidding rules apply to your circumstances.

The *Auction 111 Procedures Public Notice* provides details regarding the procedures, terms, and conditions, as well as dates and deadlines, governing participation in Auction 111, and an overview of the post-auction application and payment processes. Additional materials to assist small entities in complying with the rules and procedures for Auction 111 can be found on the Commission's Auction 111 website at <https://www.fcc.gov/auction/111>.

## II. COMPLIANCE REQUIREMENTS

### A. Auction Specifics

The complete list of construction permits offered in Auction 111 is provided as Attachment A of the *Auction 111 Eligible Parties Public Notice* available at <https://docs.fcc.gov/public/attachments/DA-21-1291A2.pdf>.

Auction 111 is a closed auction; only those parties listed in Attachment A to the *Auction 111 Eligible Parties Public Notice* are eligible to file applications to participate in Auction 111 and to complete the remaining steps to become qualified to bid. To qualify to bid in Auction 111, applicants must comply with the following requirements:

- Submission of a short-form application (FCC Form 175) before 6:00 p.m. Eastern Time (ET) on November 9, 2021, that is found to be substantially complete, and

Submission of a sufficient upfront payment for at least one of the construction permits selected by that applicant in Auction 111 before 6:00 p.m. ET on January 25, 2022.

- A timely submitted upfront payment must be accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159), following the procedures and instructions set forth in the *Auction 111 Procedures Public Notice*.
- An applicant whose application contains deficiencies is provided a limited opportunity to bring its application into compliance with the Commission's auction application rules during a resubmission window.<sup>2</sup>
- All qualified bidders will be automatically registered for the auction and mailed the necessary

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<sup>1</sup> *Auction of Construction Permits for Low Power Television and TV Translator Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 111; Bidding Scheduled to Begin February 23, 2022*, AU Docket No. 21-284, Public Notice, DA 21-1176 (OEA/MB Sept. 21, 2021) (*Auction 111 Procedures Public Notice*). On October 14, 2021, the Office of Economics and Analytics and the Media Bureau updated the list of the parties eligible to file a short-form application for MX Group 21 in Auction 111. See *Update to List of Parties Eligible to Participate in the Auction of Construction Permits for Low Power Television and TV Translator Stations (Auction 111)*, Public Notice, DA 21-1291 (OEA/MB Oct. 14, 2021) (*Auction 111 Eligible Parties Public Notice*).

<sup>2</sup> *Auction 111 Procedures Public Notice* at 33-34, paras. 102-103.

registration materials.

- Parties that timely submit short-form applications are applicants and are subject to certain of the Commission's Part 1 Subpart Q competitive bidding rules regarding application requirements and certifications (e.g., joint bidding agreements relating to the construction permits subject to auction) and the rules prohibiting certain communications.
- For example, the prohibition on certain communications for applicants in Auction 111 will begin at the short-form application filing deadline on November 9, 2021 and will end at the down payment deadline for Auction 111, to be announced in a future public notice.

## **B. Auction Procedures**

The Commission conducts auctions of broadcast construction permits in conformity with the general competitive bidding rules in Part 1, Subpart Q, of the Commission's rules, 47 CFR §§ 1.2101-1.2114, and in accordance with the broadcast-specific competitive bidding rules in Part 73, Subpart I, of the Commission's rules, 47 CFR §§ 73.5000-73.5009.

- These procedures for Auction 111 are substantially consistent with the auction procedures applied to other broadcast services since 1998.
- Applicants are required to file short-form applications to ensure that applicants are qualified to participate in auctions and hold construction permits.

## **C. Bidding Procedures**

The Office of Economics and Analytics (OEA) and the Media Bureau (MB) adopted a simultaneous, multiple-round auction format for Auction 111. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds until the bidding stops on every construction permit.<sup>3</sup> Additional procedures adopted for Auction 111 include:

- a specific minimum opening bid amount for each construction permit offered in Auction 111;
- a specific upfront payment amount for each construction permit offered in Auction 111;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit;
- use of a bidding activity requirement in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction so that bidders must bid actively during the auction rather than waiting until late in the auction before participating;
- a provision of three activity rule waivers to allow each qualified bidder to preserve bidding eligibility during the auction;
- establishment of acceptable bid amounts, along with a methodology for calculating such amounts;
- a procedure for breaking ties if identical high bid amounts are submitted for one permit in a round;
- prohibition of bid withdrawals; and

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<sup>3</sup> *Id.* at 43, para. 131.

- establishment of a default payment percentage if a winning bidder defaults or is disqualified after Auction 111, the amount of which will be 20% of the defaulter's bid or of the subsequent winning bid, whichever is less, in addition to a deficiency payment which is equal to the difference between the amount of the Auction 111 bidder's winning bid amount and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction.

Bidding in Auction 111 is scheduled to begin on February 23, 2022.<sup>4</sup> Qualified bidders have an opportunity to familiarize themselves with the FCC auction bidding system and practice submitting bids prior to the auction by participating in a mock auction on February 17, 2022.<sup>5</sup> The bidding system user guide and auction tutorial are available in electronic form in the "Education" section of the Auction 111 website at <https://www.fcc.gov/auction/111/education>.

#### **D. Post-Auction Procedures**

Shortly after bidding ends in Auction 111, the Commission will issue a public notice declaring that the auction closed and establishing the deadlines for winning bidders to submit down payments, final payments, and amendments to their pending long-form applications. Each winning bidder is required to amend its pending long-form application for each broadcast construction permit won in Auction 111 in the Media Bureau's Licensing and Management System. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 111.

##### *Compliance Requirements for Winning Bidders*

Additional compliance requirements apply to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of the following:

- 47 CFR § 1.2107(b) by submitting as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20% of the net amount of its winning bids within 10 business days of release of the auction closing public notice for Auction 111;
- 47 CFR § 1.2109(a) by submitting the balance of the net amount for each of its winning bids within 10 business days after the down payment deadline; and
- 47 CFR § 73.5005(a) by electronically amending its pending long-form application including required exhibits for each construction permit won through Auction 111 within 30 days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice.

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<sup>4</sup> *Id.* at 3, para. 1.

<sup>5</sup> *Id.* at 7-8, 40 paras. 14, 126.

### III. RECORDKEEPING AND REPORTING REQUIREMENTS

Pursuant to Section 1.65 of the Commission's rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 111.<sup>6</sup> According to the terms of Section 1.2105(b)(4) of the Commission's rules, an applicant for Auction 111 must furnish additional or corrected information to the Commission within five business days after a significant occurrence or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. The *Auction 111 Procedures Public Notice* provides instructions for each Auction 111 applicant to maintain the accuracy of its short-form application electronically using the FCC Auction Application System and/or by direct communication with the Auctions Division staff.<sup>7</sup>

### IV. IMPLEMENTATION DATE

The procedures set forth in the *Auction 111 Procedures Public Notice* became effective upon publication of a summary of that public notice at 86 FR 54852 (Oct. 5, 2021).

Subsequent implementation dates and deadlines associated with the execution of Auction 111 will be provided in the closing public notice for this auction.

### V. INTERNET LINKS

A copy of the *Auction 111 Comment Public Notice*, DA 21-801 (OEA/MB Jul. 9, 2021) is available at: <https://docs.fcc.gov/public/attachments/DA-21-801A1.pdf>.

A copy of the *Auction 111 Procedures Public Notice*, DA 21-1176 (OEA/MB Sept. 21, 2021) is available at: <https://docs.fcc.gov/public/attachments/DA-21-1176A1.pdf>.

A copy of the Federal Register summary of the *Auction 111 Procedures Public Notice* is available at: <https://www.govinfo.gov/content/pkg/FR-2021-10-05/pdf/2021-21559.pdf>.

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<sup>6</sup> 47 CFR § 1.65.

<sup>7</sup> *Auction 111 Procedures Public Notice* at 28-30, paras. 81-88.